

REVISED SUMMARY OF SUBMISSIONS – TECHNICAL AND DRAFTING

This table is a summary of submissions on technical and drafting issues lodged for this award on or before 5.00pm on 29 November 2016. The summary has been revised to include feedback from the hearing on 6 December 2016 ([Transcript](#)).

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1.	BusSA	Sub-30/06/16	2	Definitions – ‘children’s services and early childhood education industry’ definition should only appear once. Definition in cl. 2 should direct readers to coverage clause 4.2.	Para 2.1.1	Agreed, see Transcript-6/12/16 [PN538]
	AIG	Reply-25/07/16		Amendment not necessary, but does not oppose.	Para 129	
	AFEI	Reply-10/05/16		Supports BusSA submission.	Para 38	
2.	AIG	Sub-30/06/16	2	Definition – ordinary hourly rate Seeks definition of ‘ordinary hourly rate’ to be included.	Para 237	Agreed ‘ordinary hourly rate’ definition should be inserted, see Transcript-6/12/16 [PN538]
	BusSA	Reply-21/07/16		Agrees with AIG	Pg 12	
	AFEI	Reply-10/05/16		Agrees definition should be in cl.2, but then unnecessary to duplicate in B.1.1.	Para 39	
3.	UV	Sub-30/06/16	2	Definition – ‘ordinary hourly rate and ‘minimum hourly rate’ – general submission effects multiple awards – should refer to ‘employee’s classification, grade and level’.	Paras 1-5	
4.	AIG	Reply-25/07/16		Minimum rate definition unnecessary, rate is prescribed in cl. 16. Regarding ‘ordinary hourly rate’ the additional reference to ‘grade’ and ‘level’ unnecessary as proposed definition in ED refers to classification specified in cl. 17.	Paras 130-132	

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5.	UV	Sub-30/06/16	2	Definition – all purpose – ‘all purposes’ definition should only appear at cl.17.2(a)	Para 30	AIG noted if definition of ‘ordinary hourly rate’ is inserted per item 2, definition uses term ‘all purpose’. Therefore the definition of ‘all purpose’ should be included in clause 2. UV not particularly agitated by that. See Transcript-6/12/16 [PN540-PN545]
	AIG	Reply-25/07/16		Notes no definition for ‘all purposes’ is contained in cl.2. Submission not dealt with.	Para 127	
6.	UV	Sub-30/06/16	3.3	Access to the award and the National Employment Standards – <i>general submission applies numerous awards</i> – The words ‘whichever makes them more accessible’ should be retained.	Para 3	
	AIG	Reply-25/07/16		Opposes UV’s submission. Determined by FWC at early stage of review.	Para 133	
7.	UV	Sub-30/06/16	4	Coverage – amend reference to <i>Clerks – Private Sector Award 2010</i> – industrial dispute history of childcare centre clerical workers being misclassified as support workers under this award, when they are classified under the Clerks Award [<i>UV v Cuddlepie Early Childhood Learning Centre</i> [2015] FWC 6661]	Pg 6	Appears to be substantive issue, parties given opportunity to write to Commission seeking to have it referred after conference. See Transcript-6/12/16 [PN546-PN561]

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	ABI & NSWBC	Reply-22/07/16		Opposes UV submission, disputes will have intended effect, as 4.1 notes award does not cover <u>employers</u> and Clerks Award is occupational award, childcare centre employees would be covered by this award.	Para 4.1	
	AIG	Reply-25/07/16		Submits substantive claim. Notes CCSA seeks to vary Clerks Award to exclude employers covered by Children's Services Award.	Para 134-135	
	AFEI	Reply-10/05/16		Opposes UV's proposal.	Para 40	
	UV	Sub-6/10/16		See variation in draft determination. Parties disagree whether substantive or not.	Pg 2	
8.	AIG	Sub-30/06/16	11.1	Casual Employment – Removing 'as such' substantially alters clause. Clause be amended to insert 'as such' after 'engaged'. Current cl.10.5(b) to be restored as separate subclause, words 'for temporary and relief purposes' deleted cl.11.1.	Paras 238-240	Agreed, see Transcript-6/12/16 [PN562]
	ABI & NSWBC	Sub-1/07/16		Submits 'as such' should be retained.	Para 5.1	
	BusSA	Reply-21/07/16		Agree with AIG and ABI submissions.	Pg 12	
	AFEI	Reply-10/05/16		Agree with AIG and ABI submissions.	Pg 7	
9.	AIG	Sub-30/06/16	11.1	Casual employment – calculation of casual loading should be based on minimum hourly rate, not ordinary hourly rate. To calculate on ordinary hourly rate is substantial change to current award. Related amendment to Sch. B.3 required.	Para 241	

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10.	BusSA	Sub-30/06/16	13.9(g)	Hours of work—out-of-school care, preschools and kindergartens – response to request from Commission Reference to transitional instrument and Div 2B State awards no longer necessary, cl. 1.4 protects employees from reduction in pay.	Para 2.2.1	
	UV	Sub-30/06/16		Clause preserves entitlements of employees employed under those instruments and is still necessary.	Para 32	
	AFEI	Reply-10/05/16		Agrees with BusSA	Para 43	
10A	G8E	Sub-12/11/15	16.2	Minimum wages Seeks to insert clause from <i>Educational Services (Teachers) Award 2010</i> at 16.2 (clause 14.2 of current award).	Page 1	Raised at hearing, may be a substantive issue. To be discussed at conference. See Transcript-6/12/16 [PN570-PN571]
11.	BusSA	Sub-30/06/16	16.7(d)	Minimum Wages – higher duties – response to request from Commission Seeking member feedback	Para 2.2.2	
	UV	Sub-30/06/16		Does not support ‘Supervising officer’ to be amended to ‘Authorised supervisor’, gives history of use of wording. Notes award modernisation process chose term with intention it be a catch-all title for various types of persons with statutory supervisory responsibilities.	Paras 33-41	

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12.	DECD SA	Sub-21/07/16	17.2(b) 15.6 (current award)	Wage related allowance – qualifications allowance – submits ambiguous as to what 'graduate certificate is', does not define qualification required to be eligible for allowance.	Pg 2		
13.	AIG	Sub-30/06/16	17.2(c)	Wage related allowances – broken shift allowance – 'who' should appear after 'employee'	Para 243	Agreed, see Transcript-6/12/16 [PN562]	
		Reply-25/07/16			Para 137		
	ABI & NSWBC	Sub-1/07/16		Insert the word 'who'	Pg 5		
	AFEI	Reply-10/05/16		Does not oppose inclusion	Para 41		
	BusSA	Reply-21/07/16		Agrees	Pg 12		
14.	BusSA	Sub-30/06/16	17.3(d)	Expense related allowances – use of vehicle allowance – ED changes 'where an employer requests' to 'if employer requests' alters operation of clause. Retain original wording.	Para 2.1.2		
	AIG	Reply-25/07/16			Change proposed by BusSA is not necessary.		Para 138
	AFEI	Reply-10/05/16			BusSA's amendment is unnecessary.		Para 42

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15.	DECD SA	Sub-21/07/16	Sched A.1.1 – A.1.8	Classification – (current award B.1.1 – B.1.8) – ambiguity over whether employee classified by level of qualification obtained or by duties engaged to do. Interpretation DECD takes is that employee's classification should be dictated by duties employee is engaged to perform unless they are engaged as 'qualified educator' for purposes of child/educator ratio, in which case classification be determined by qualification.	Pg 1	
16.	DECD SA	Submission – 21 July 16	Sched A.1.10	Classification – (current award – B.1.10) – terminology of 'licensed' does not reflect current processes for approval under the National Qualification Framework. Propose amending it to 'approved places' to reflect current terminology.	Pg 1	
17.	AIG	Sub-30/06/16	Sched B	Summary of hourly rates – table structure '% of ordinary rates' could be misleading, if people fail to read in context of B.1. Issue raised in other EDs. Propose to amend to read '% of minimum hourly rate' or indication within table that different rates apply where employee entitled to allowances in cl. 17.2.	Paras 244-248	Agreed, see Transcript-6/12/16 [PN562]
	AFEI	Reply-10/05/16		Agrees with AIG's submission and proposed solutions.	Para 44	

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18.	ABI & NSWBC	Sub-1/07/16	Schedule C.2.1(a)	Summary of monetary allowances – expense related allowances – submits word ‘increased’ should be replaced with ‘adjusted’, current wording presumes that relevant figures will always be increase.	Para 5.3	
	AFEI	Reply-10/05/16		Does not oppose ABI & NSWBC’s amendment, but notes ED consistent with current award.	Para 45	
	BusSA	Reply-21/07/16		Agrees with ABI & NSWBC’s proposal.	Pg 12	

List of abbreviations (in alphabetical order)

ABI & NSWBC	Australian Business Industrial and the NSW Business Chamber
ACA	Australia Childcare Alliance
AFEI	Australian Federation of Employers and Industries
AIG	Australian Industry Group
BusSA	Business SA, Chamber of Commerce and Industry South Australia
CCSA	Community Connections Solutions Australia
DECD SA	Department for Education and Child Development – South Australia
ED	Exposure draft
G8E	G8 Education Ltd
UV	United Voice